

Message Text

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ACTION STR-04

INFO OCT-01 EUR-12 IO-10 ISO-00 STRE-00 AGR-05 SP-02

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FM USDEL MTN GENEVA

TO SECSTATE WASHDC 0966

AMEMBASSY BONN

AMEMBASSY BRUSSELS

USMISSION EC BRUSSELS UNN

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY THE HAGUE

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY ROME

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PASS STR FOR ACTION

E.O. 11652: N/A

TAGS: ETRD EEC

SUBJECT: PROSPECTIVE EC MIXING REGULATION FOR SKIM MILK POWDER

REF: EC BRUSSELS 11207

1. MTN DEL AWARE THAT NEXT STEP IN DEALING WITH PROSPECTIVE
EC MIXING REGULATION IS EXPECTED TO BE EARLY JAN MEETING
BETWEEN LARDINOIS AND SECRETARY BUTZ. WE ARE OUTLINING
BELOW FOR WASHINGTON CONSIDERATION A PROPOSED LINE WE
THINK U.S. SHOULD TAKE ON THIS MATTER BOTH WITH LARDINOIS
AND, IF FEASIBLE, WITH EC COMMISSION IN ADVANCE OF LARDINOIS'
DEPARTURE FOR U.S.

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2. MTN DEL SUGGESTS THAT WE SHOULD USE ALL REASONABLE AVENUES OPEN TO US PRIOR RPT PRIOR TO EC DECISION TO PROTECT OUR SOYBEAN TRADE AND TO LEAVE EC UNDER NO MIS-APPREHENSION ABOUT NATURE OF OUR REACTION IF THEY PROCEED. THIS CASE ALSO OFFERS GOOD OPPORTUNITY TO POINT UP DEFICIENCIES OF CONSULTATION AND DISPUTE SETTLEMENT MECHANISM IN THE GATT AND URGENCY OF PROMPT ATTENTION TO THIS GENERAL QUESTION IN MTN CONTEXT.

3. EC INDIFFERENCE THUS FAR TO U.S. EXPRESSIONS OF MISGIVINGS ABOUT MIXING REGULATION SUGGESTS WE SHOULD TELL EC WHAT WE WILL DO IF MIXING REGULATION IS APPLIED. PURPOSE WOULD NOT BE IDLE THREAT BUT IN HOPES OF PERSUADING THEM TO ABANDON COURSE OF ACTION THEY APPARENTLY INTEND TO FOLLOW. WE RECOMMEND CONSIDERATION OF FOLLOWING LINE:

A. MIXING REGULATION WOULD VIOLATE ARTICLE 3 OF GATT AND ALSO IMPAIR VALUE OF GATT BINDING;

B. U.S. IS NOT WILLING TO ALLOW ITEM OF SUCH IMMENSE TRADE IMPORTANCE TO U.S. TO BE IMPAIRED AND THEN SEEK REMEDY THROUGH INTERMINABLE PROCESS UNDER DEFECTIVE GATT RULES; I.E. WE WILL NOT USE ARTICLE 22 CONSULTATION FOLLOWED BY ARTICLE 23 NULLIFICATION AND IMPAIRMENT PROCEDURES REQUIRING ALL CONTRACTING PARTIES TO ADJUDICATE THE CASE; INSTEAD, WE WILL PROCEED UNDER SECTION 301 OF TRADE ACT, CALCULATE OURSELVES THE VALUE OF TRADE LIKELY TO BE IMPAIRED, AND INCREASE DUTIES ON A PRINCIPAL OR GROUP OF PRINCIPAL EC EXPORTS TO U.S. TO A LEVEL NECESSARY TO REDUCE IMPORTS FROM EC BY AMOUNT CLOSE TO ANTICIPATED U.S. LOSS OF SOYBEAN EXPORTS.

C. IN RESPONSE TO LIKELY EC REACTION THAT SUCH ACTION UNDER 301 INCONSISTENT WITH GATT, WE SHOULD RESPOND MIXING REGULATION IS A CLEAR VIOLATION OF GATT AND WE WOULD BE PREPARED TO HAVE EC ACTION AND OUR RESPONSE EXAMINED AND ADJUDICATED BY GATT. MEANWHILE, WITHDRAWAL BY U.S. OF CONCESSIONS IN RESPONSE TO THEIR IMPAIRMENT OF SOYBEAN BINDING WOULD LEAVE BOTH SIDES SOMEWHAT NEAR PARITY RATHER THAN ALLOWING U.S. TRADE ALONE TO BE IMPAIRED WHILE A COUPLE OF YEARS OF GATT INQUIRY PROCEEDS.

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4. IF PRESENTATION ALONG FOREGOING LINES DOES NOT PRODUCE DESIRED RESULTS PROMPTLY, I.E. EC COMMITMENT TO ABANDON MIXING REGULATION OR ANY OTHER DEVICE TO REDUCE OUR SOYBEAN EXPORTS IN ORDER TO GET RID OF EXCESS SKIM MILK POWDER, U.S. EXECUTIVE BRANCH SHOULD INITIATE DOMESTIC PROCEDURES REQUIRED UNDER SECTION 301 SO AS TO BE IN A POSITION TO IMPLEMENT TARIFF INCREASES OR OTHER FORMS OF TRADE RETALIATION ON EC GOODS (IN DISCRIMINA-

TORY MANNER PERMITTED BY THAT ACT) AS PROMPTLY AS POSSIBLE
AFTER IF NOT SIMULTANEOUSLY WITH EC IMPLEMENTATION OF
MIXING REGULATION OR ANY COMPARABLE DEVICE.

5. MTN DEL RECOGNIZES FOREGOING IS A BLUNT APPROACH
BUT IT SEEMS CALLED FOR IN VIEW CLEAR INDICATION IN
PARA 3 REFTEL THAT EC AGRICULTURE MINISTERS INTEND TO
HAVE U.S. SOYBEAN PRODUCERS BEAR THE COST OF A SOLUTION
TO THE PROBLEM EC AG MINISTERS HAVE THEMSELVES CREATED
BY UNECONOMIC PRODUCTION OF SKIM MILK POWDER. WE
RECALL U.S. TACTICS IN EARLY 1969 SIMILAR TO THAT
RECOMMENDED ABOVE PERSUADED EC TO WITHDRAW A VARIABLE
LEVY ON SOYBEANS.

6. THE PRINCIPAL STRATEGIC OBJECTION WE SEE TO THIS
COURSE OF ACTION IS ITS PRECEDENTIAL EFFECT. OUR ARGUMENT
FOR CAUTION IN DEALING WITH 301 CASES HAS BEEN OUR CON-
CERN OVER IMPAIRMENT OF U.S. INTERNATIONAL OBLIGATIONS.
USE OF THE 301 WEAPON IN THIS CASE COULD HAVE IMPLICATIONS
FOR ITS USE IN OTHER CASES. THE ISSUE WHICH SHOULD BE
CONSIDERED IN THIS CONNECTION IS WHETHER THE KIND OF
CASE PRESENTED BY THIS SET OF FACTS, REPRESENTING A CLEAR
IMPAIRMENT OF BINDING ON A VITAL U.S. TRADE ITME. IS
SUFFICIENTLY DISTINGUISHABLE TO WARRANT INVOKING SECTION 301
WITHOUT SETTING A POSSIBLY HARMFUL PRECEDENT FOR OTHER
LESS CLEAR-CUT CASES. WE THINK THE DISTINCTIONS CAN BE
MADE AND THAT STRONG ACTION IS WARRANTED. WALKER

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